

RECEIVED
IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CEDRIC ALLEN SMITH, et al.,
Full name and prison number
of plaintiff(s) #155509

v.

RICHARD ALLEN/COMMISSIONER

BOB RILEY/ GOVERNOR

ASSO.COMM. (DOC) CLASSIFICATION

PAUL WHALEY/DIRECTOR OF CLASSI-
FICATIONS.

Name of person(s) who violated
your constitutional rights.
(List the names of all the
persons.)

CIVIL ACTION NO. 2:07cv108-MEF
(To be supplied by Clerk of
U.S. District Court)

I. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? YES () NO (XXXX)
- B. Have you begun other lawsuits in state or federal court relating to your imprisonment? YES () NO (XXXX)
- C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiff(s) N/A

Defendant(s) "

2. Court (if federal court, name the district; if state court, name the county) "

N/A

SCANNED BY 2.6.

3. Docket number N/A
4. Name of judge to whom case was assigned "
- "
5. Disposition (for example: Was the case dismissed?
Was it appealed? Is it still pending?) N/A
- "
- "
6. Approximate date of filing lawsuit "
7. Approximate date of disposition "

II. PLACE OF PRESENT CONFINEMENT FOUNTAIN 3800, ATMORE, AL. 36503

"

PLACE OR INSTITUTION WHERE INCIDENT OCCURRED "

"

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR
CONSTITUTIONAL RIGHTS.

	NAME	ADDRESS
1.	RICHARD ALLEN/COMMISSIONER	301 SOUTH RIPLEY ST. MONT. AL 36130
2.	BOB RILEY/GOVERNOR	" " "
3.	ASSO. COMMISSIONER (DOC) CLASSIFICATION	" " " "
4.	PAUL WHALEY/DIRECTOR OF (DOC) CLASSIFICATION	" " "
5.		
6.		

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED 1991 AND PRESENT

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION
THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:

GROUND ONE: PLEASE SEE ATTACHED PAGES

STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place and manner and person involved.)

PLEASE SEE ATTACHED PAGES

"

"

"

GROUND TWO:

PLEASE SEE ATTACHED PAGES

"

SUPPORTING FACTS:

"

GROUND THREE:

PLEASE SEE ATTACHED PAGES

"

SUPPORTING FACTS:

"

"

"

"

"

"

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU.
MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

SEE Attached pages.

Cedric Allen Smith 155509
Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true
and correct.

EXECUTED on 30th OF JANUARY, 2007
(Date)

Cedric Allen Smith
Signature of plaintiff(s)

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU.
MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

INJUNCTIVE AND DECLARTORY RELIEF,
GRANT AN EMERGENCY HEARING IN ORDER TO PROTECT PLAINTIFF(S)
AND OTHERS SIMILIAR SITUATED CONSTITUTIONAL RIGHTS AND IN
THE BEST INTEREST OF THE PUBLIC AND THE PEOPLE.

Cedric A Smith #155509

CEDERIC ALLEN SMITH #155509

Freddie Lee Bell #134318

FREDDIE LEE BELL # 134318

Anthony Burton, #136983

ANTHONY BURTON # 136983

Tony C. Broach #136351

TONY C. BROACH #136351

Stephen Thomas #124145

STEPHEN THOMAS #124145

James Murray #101186

JAMES MURRAY # 101186

PLAINTIFF(S)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND
CORRECT.

EXECUTED ON January 30th, 2007
(DATE)

Cedric Allen Smith #155509

SIGNATURE OF PLAINTIFF

IN THE MIDDLE DISTRICT OF ALABAMA
UNITED STATES COURTHOUSE

CEDRIC ALLEN SMITH #155509
(AND OTHERS SIMILAR SITUATED)

FREDDIE LEE BELL # 134318 et al.,
ANTHONY BURTON #136983 et al.,
TONY C. BROACH #136351 et al.,
STEPHEN THOMAS #124145 et al.,
JAMES MURRAY #101186 et al.,
PLAINTIFF(S)

VS.

RICHARD ALLEN COMMISSIONER

GOVERNOR BOB RILEY

ASSOC. COMMISSIONER
(DEPT. OF CORR. CLASSIFICATION)

PAUL WHALEY (DIRECTOR OF CLASSIFICATION
DEPT. OF CORRECTIONS).

DEFENDANTS.

2:07cv108-MEF
CASE NO: 2:07cv98-MEF
to be supplied by clerk

The petitioner(s) avers that, the Alabama Correctional Time Act (CIT), (14-9-41), code of Alabama subsection (e), Acts 80-446), violates administrative procedures, violates state constitutional requirements for passage of legislation or Federal protection and "due process" guaranteed in the way that it has and still being administered by selective implementation through the department of corrections and administrative department.

Acts 80-446, violates Article 4, of the Alabama Constitution because it contains a provision which broadened the scope of the act beyond that expressed in the title.

Acts 80-446, violates Article 4, 61, of the Alabama Constitution (1901), because an amendment in 1991 to the act changed the original purpose of the act.

Acts 80-446, on its face, violates the "equal protection" guaranteed by the fourteenth amendment, Article 4, each law shall contain One

subject, which shall be clearly expressed in its title.

Prisoners that are prohibited from earning goodtime by acts 80-446, or by 14-9-41, are receiving goodtime credits selectively by the department of correction (DOC) against legislative intent.

HABITUAL FELONY OFFENDERS

The act, 80-446 prohibited habitual offenders from receiving any deduction from their sentence, however, in 1991, this act was in effect from an earlier legislative passage acts no: 80-446. In 1991, the incentive "goodtime incentive act", was amended. This amended act allowed inmates with fifteen (15) years or less, to receive the benefits of receiving incentive goodtime credits. This amendment also allowed habitual offenders to receive goodtime credits and deductions from their sentence, this amended act was in violation of acts 80-446.

Inmates are denied the benefits of receiving incentive goodtime credits on a statute or under a statute that is abbigious.

Subsection (e) implementation by the commissioner of the Alabama Department of Corrections to code of alabama 14-9-41 is unconstitutional, and is being implemented against legislative intent.

(6). Acts[80-446], Codified in (14-9-41) Code Of Alabama reads,...

(a). Each prisoner who shall thereafter be convicted of any offense against the laws of the state of alabama and is confined, in the execution of judgment or sentence upon any conviction, in the penitentiary or at hard labor for the county or any municipal jail for a definite or indeterminate term, other than for "life" whose record of conduct shows that he has faithfully observed the rules for a period of time to be specified by the article may be entitled to earn a deduction from the term of his sentence as follows:

(1). SEVENTY-FIVE (75) DAYS FOR EACH 30 DAYS ACTUALLY SERVED WHILE THE PRISONER IS CLASSIFIED AS A CLASS (1) ONE PRISONER,

(2). FORTY (40) DAYS FOR EACH (30) DAYS ACTUALLY SERVED WHILE THE PRISONER IS A CLASS (2) PRISONER,

(3). TWENTY (20) DAYS FOR EACH (30) DAYS SERVED WHILE THE PRISONER IS A CLASS (3) THREE PRISONER,

(b) Within 90 days after May 19, 1980. The Commissioner of the Department Of Corrections shall establish and publish appropriate directive certain criteria not in conflict with this article for class 1,2,3, and 4 prisoners, classification shall encompass consideration of the prisoners behavior, discipline, and work practice and job responsibility(s).

(7). The petitioner avers, that he is being denied goodtime credits based solely on the length of his sentence 14-9-41(e), Yet, he has been classified at one time or another during his incarceration as a class 1,2,3, and 4 prisoner, the petitioner has been to WORK RELEASES", "HONOR CAMPS" WORK CAMPS", throughout his incarceration, he has proven though the years to be cooperative and respect authority, work hard on every detail, and has proven to be "trust worthy", the petitioner did not receive any GOODTIME CREDITS while in those classes.

(8). The commissioner has implemented a policy in classifying prisoners to a certain class...class 1,2,3 and 4. When a prisoner is placed in either class of the above classes there is a procedure and policy that the prisoner must comply with to enter that class and a policy that the prisoner must obey in order to stay in that class or move to a higher but less restrictive class, Each class is implemented around a inmates behavior, disciplinary history, discipline and ability to work, each class affords that prisoner a certain amount of goodtime to be earned and a deduction from his sentence while in that particular class, the department of corrections is placing prisoners in those classes, but are denying to them the goodtime while in that class, that is afforded to them by that class, 14-9-41 of the code of Alabama,[14-9-41] of the code of Alabama governs the amount of "goodtime" credits each prisoner must earn or can earn while in a particular class, this section also governs the amount of time a prisoner must remain in a particular class before being eligible for a lesser restricted class. Prisoners are being placed in class 1,2, and 3 under a condition that has been imposed, and implemented, by the Alabama legislature which governs the prisoners conduct, behavior, and ability to adjust to prison "life", however, prisoners are being denied the benefits to receive incentive "goodtime" credits in that class by the department of corrections, even though each class affords prisoners the privilege to receive those credits, prisoners with "SEX" crimes and "VIOLENT" offenders receive the benefits of goodtime credits while in those classes and a deduction from their sentence, while prisoners with "non violent" are property crimes are being denied goodtime credits are any reduction from their sentence while in those classes... The inmates which are supposed to be prohibited from earning goodtime credits are "Habitual offenders" those convicted of a class "A" felony and "Trafficking" are in fact the very one's that is receiving goodtime credits.

(9). Acts 80-446, codified in 1409-41 (code of Alabama) reads:

(1) Class 1- Is set aside for those prisoners who are (considered), to be "trustworthy" in every respect and who, by virtue of their work habits, conduct an attitude of cooperation, have proven their trustworthiness.... an example: of a class 1 prisoner is one who could work without constant supervision by a security officer.

(2). Class 2: Is that category of prisoners who will be under the supervision of a correctional employee at all times. any inmate shall remain in this class for a minimum period of (6) six months before being eligible for class 1.

(3). Class 3: Is set aside for prisoners with special assignments. they may not receive the privileges of class 1 and 2 prisoners, any inmate shall remain in this classification for a period of the minimum of three months before being eligible for class (2) two.

(4). Class 4: Is for those prisoners yet, not classified and for those who are able to work and refuse, or who commit disciplinary infractions of such nature which do not warrant a "higher Classification", inmates that are classified in this earning class receives "NO" "CORRECTIONAL INCENTIVE GOODTIME". this class is generally referred to as "FLAT TIME" or "DAY FOR DAY". Any inmate shall remain in this classification for a minimum of thirty (30) days before being eligible for class (3) three.

There is nothing contained in class 1,2, or three which prohibits a prisoner from receiving goodtime credits while in that class, Yet, the department of corrections are denying inmates goodtime while in class 1,2, or 3 based solely on the length of their sentence without any consideration to the "seriousness" of their offense, crimes or convictions, prisoners that have been prohibited from earning goodtime by the legislature deeming their crimes to serious to receive beneficiary treatment are receiving goodtime by the department of corrections while in class 1,2, or 3.....
[SEX OFFENDERS AND CHILD MOLESTORS SHOULD NOT RECEIVE AND REDUCTIONS FROM THEIR CONVICTION AND SENTENCE]/.....

(11). The petitioner avers, that ~~They~~ ^{he} is being denied "Equal Protection" of the law Under 14-9-41, subsection (e) because, he has been sentenced to a term of (20) twenty years for the charge of theft of property 1st degree..

(A). Example; the legislature amended section (15-18-8 code of Alabama) May 19, 2000. to allow prisoners that are sentenced to a term of imprisonment 20 years or less to have their sentences split yet, the legislative obviously deemed the nature of their offenses to serious to merit the benefits of receiving goodtime sentence reductions. It is reasonable to assumed that the legislature also concluded that anyone who received a sentence in the class "A" felony range would not merit beneficial treatment..... When a prisoner is convicted of a class "A" felony and receives a sentence of 20 years and have that sentence split to serve three years incarceration and the maximum years of probation of five(5) years, that prisoner will be allowed to complete his entire twenty (20) years sentence in eight (8) years without any further supervision by the state of Alabama, however, when a prisoner is sentence to that same term of imprisonment and does not have his or her sentence split under the split sentence act, that prisoner will have to serve his entire sentence either on parole, if paroled, or in the department of corrections...When 15-18-8 split sentence act was amended, the goodtime incentive act 14-9-41 of the code of Alabama should have also been amended in order to bring the same prisoners and less violent prisoners within the same category of sentence reductions under "Equal Protection" of the law.

(1). One of the purposes of the requirement of this section 45, (supra), that the subject of law shall be clearly expressed in the title, is to prevent surprise or fraud upon the legislative by incorporating in "BILLS". provision not reasonably disclosed by its title, and which might be overlooked, and unintentionally approved in enacting (THE BILL) 247 so 2d 195 (123 so 2d 505

(2). The incentive goodtime credit statute is being applied arbitrary and selective by the department of corrections against legislative intent.

(3). Prisoners are being denied goodtime solely on the length of their sentence and not the seriousness of their offense.

(4). Inmates are classified under a behavior system. This system classifies inmates and places them in a class 1, 2, or three prisoner, each class provides inmates with an opportunity to receive goodtime credits and a reduction of sentence.

(5). Repeated "SEX" offenders and repeated "VIOLENT" offenders receive benefits of incentive goodtime credits while the majority of inmates with less serious crimes to include "non violent" offenses are being denied such incentives.

(6). Inmates are "Categorically" denied goodtime by the department of corrections which is in violation of the legislature intent... SEE: [Lopez V. Davis].

(A). Act 80-446 Violates Alabama constitutional amendment: section 61 by its 1991 amendment,

Acts 80-446 "Incentive Goodtime Credits" was passed in 1980, by the Alabama Legislature, the "Bill" denied goodtime credits to prisoners who have been sentenced to "life" or "Death", Subsection (e) broadened those credits to deny prisoners who have been convicted of a class "A" felony, those who receive a sentence of 10 years, prisoners that have been convicted of assault in where the victim suffered permanent loss or permanent loss or partial loss or use of a bodily organ or appendage, those that have been convicted of sexual assault upon a "Child" under 17 years old or prohibited from receiving good time credits, [sexual assaults under the age of 17 or prohibited from entering class 1 earning statutes but are not prohibited from earning goodtime credits].

The habitual offenders act of 1981 also prohibited prisoners that has been sentenced as a habitual offender from receiving any reduction from sentence. Habitual offenders was not the only class that was prohibited from earning goodtime by the legislative statute, Inmates who receive a sentence of 10 years or more and those inmates who receives a sentence in the class "A" felony was also precluded. [minimum sentence a habitual offender can receive is 15 years].

Act 80-446 was amended from 10 years to 15 years act of July 31, 1991. No. 91-637, codified at Ala. code 14-9-41 (e) Act 1201 effective october 29, 1991. The act was amended because the prison system was "Dangerous Overcrowded" with habitual offenders, When this act was amended it "Drastically" changed the purpose of the act, The amendment allowed the habitual and repeated habitual felony offenders the benefits of receiving goodtime credits and a reduction from their sentence in violation of legislative intent... [this was totally against the legisltive purpose of passing the act. The legislative in passing act 80-446 made it be known that habitual felony offenders would not receive any goodtime or reduction from sentence pursuaint to this act.[This] amendment was also applied retroactively... when the act was amended to allow goodtime credit and a reduction from sentence, this amendment also denied inmates "Equal Protection" of law when this amendment did not grant inmates who was habitual felony offenders with sentences of 15 year or more, the legislative not only denied habitual offenders good time but also denied prisoners who was convicted of a class "A" felony or received a sentence in the class "A" felon range. [when a prisoner receive a sentence of 10 years or more doesn't means that, that person has committed a serious offense.

Brooks V. State 622 so 2d 447 (reversed and remanded) denial of goodtime credits violated prisoners "equal Protection" when the reason for such denial was based solely on the time of conviction and not determination about the nature or the seriousness of the offense. The court observed that it was rational to deny goodtime benefits to both class "A" felony(s) and those who have been sentenced to 10 years or more, because the latter group receives a sentence in the class "A" felony range, and therefore, could be considered as "Serious Offender", the minimum sentence for a class "A" felony is 10 years, Alabama Code 13 A-5-6...are...ineligible for goodtime because the legislature deemed the nature of their offense to be serious to merit the benefits of goodtime sentence reduction, it was reasonable to assume that the legislature also concluded that anyone who received a sentence in the [legislature act] class "A" felony range would also not merit beneficial treatment. Thomas V. State 552 so 2d 875. Gaines V. State 581 so 2d 448, The supreme court concluded that there is a "perceivable" set of facts under which a statutory discrimination against "Sex Offenders" is relevant to and justified by permissible legislative purpose, that perceivable set of facts includes the possibility that a convicted sex offender who is not rehabilitated might be released early.

When the legislature amended 14-9-41 (e) in 1991 from 10 years to 15 years it qualified the habitual felony offenders to receive goodtime credits, this amended act came in conflict with prior legislative law which prohibited habitual offenders from receiving goodtime, this amendment also expanded the goodtime eligibility to include inmates sentenced to longer prison terms presumably for a more serious crime. 275 Ala 254 opinion of justice.....one of the purposes of the requirement of section 45, supra, that the subject of a law shall be clearly expressed in its title, to prevent surprise or fraud upon the legislature by incorporating its bill provision not reasonably disclosed by its title, and which might be overlooked. Kendrick V. Boyd 255 Ala. 53, so 2d 694 Taylor V. Johnson 265 Ala. 541.

Ex-Parte Hilsabeck 477 so 2d 472. The purpose of act 80-446, is clearly expressed as one to establish the "Alabama Correctional Incentive Act", that alone state that the legislation deals with goodtime for prison inmates, the next title respectively, states that the act establishes "certain criteria" for earned deductions and creates "classifications for measurment of such deductions and eligibility thereof (habitual offenders) are mention as one o of the groups excluded from earning goodtime credits..... Act 80-446 violates article 4 section 61, of the Alabama constitution section 61 provides "no law shall be so altered or amended on its passage through either house as to change it original purpose.

Acts 80-446 was made clear and unambigious in its provisions when uncertainly was injected into the act when its provisions was attempted to be broaned or expanded the lanuage of the act.

901 F2d 1058

[Ricket V. State ~~99-2108-447~~] Selective and disparate treatment violation of equal protection. [impermissable classification]
Wayne V. State, 84 L.ed 2d 547.

Aalabama deals with a racial classifiaction system embodied in a criminal statute the 1991 amendment does not order these ex-clusions by defining the statutory terms of prisoners convcited of "non Violent" offenses or the cognate terms 'crimes of violence instead, the current regulation relies upon the discretion allo- ted to the commissioner of the department of corrections in grant- ing a sentenec reduction to exclude categories of inmates, the administartion regulation, designed to achieve consistent admini- strative of the incentive, now provides,

(1). Inmates who are sentenced to 15 years are less to include habitual felony offenders the privelege of receiving goodtime credits and allowed violent offenders with longer prison terms that was prohibited by the legislative to receive goodtime under the new amended act.

inmates with less serious crimes and property crimes are being denied goodtime credits based solely on the length of their sentence, they are also "Bracketed" in a category with violent offenders because the department of corrections suggests that they pose a particular risk to the public...while Cedric has been incarcerated he has been classified as a class 1, 2, and 3, prisoner at some point during his incarceration to include "three" years at "work release", but has been categorically denied the benefits of goodtime while in these classes.

The question to be answered pertaining to this fact of law is; could the department of corrections place an inmate in a category which grants goodtime credits and then deny that inmate goodtime credits based solely on the length of his sentence without consideration as to the seriousness of the crime, this kind of selective action by the department of correction is what causes the statute to be ambiguous[unambiguous] and deny him "equal protection" and "due process" of law. If the legislature wanted the department of corrections to reduce the category of inmates eligible for early release incentive (beyond the ones identified by the legislature) the legislature would have specifically placed this grant of authority in the language of the statute, and if the department of corrections has discretion to deny early release to some inmates, but only based on an inmate's sentence and not the factors therein, then the agency cannot categorically deny early release even to the recidivist with prior, or perhaps "multiple" convictions of "Rape" "Robbery," "Homicide" or any other crime of violence..The question to this issue is?

Did the legislature of Alabama intend for all inmates to receive some reduction from their sentence who has been convicted of a non-violent crime?

Did the Alabama Legislative intend for "SEX" offenders and repeated "VIOLENT" offenders to receive goodtime credits and receive a early release from prison?

Did the legislature intend for Habitual Felony Offenders to receive goodtime credits and a early release from their sentence?

Did the legislature intend to allow inmates with sex offenses, and violent offenses to receive the benefits of goodtime credits, and deny inmates with property offenses this benefits based solely on the length of a person sentence and not the seriousness of their offense?

We deal here with a ambiguous statute, which grants goodtime credits to the majority of "sex" offenders and denies goodtime to a majority of inmates who has been convicted of less serious crimes where the power of the state weighs most heavily upon the individuals or group, we must be especially sensitive to the policies of the equal protection clause which, reflected in legislative enactments dating from 1870, were intended to secure "Full and equal benefits of all laws and proceedings for the security of persons" to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to others.

When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilize one and not the other, it has made invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment.

[YICK WO V. HOPKINS 30 L.ed 2d 220]

subsequent legislation declaring the intent of an earlier statute is entitled to significant weight....although a mistaken opinion of the legislature concerning the meaning of an earlier statute does not itself make law, such an opinion must nevertheless be given the effect of law, prospectively if it is expressed in words competent to make law, since it is within the power of the legislative for the future, although inoperative as to the past.

the pronouncement of legislative committee respecting, the meaning of a previously enacted statute was entitle to consideration weight in the judicial construction of the statute, where the committee in question was the one which had reported the bill on which the statute was based.[Quern V. Mandley 56 L.ed 2d 134 918] See; also [McLaighin V. Florida 13 L.ed 2d 222][Brown V. Dubchesne, 15 L.ed 2d 595][NLRB V. Bell Aerospace Co. 4o L.ed 2d 134][prounouncement of legislature 50 L ed 2d 918][Statutory Generally 41 L. ed 2d 134][Thorton V. Hunt 852 F. 2d 526][95 A.L.R. 2d 1256][Brooks V. State 622 so 2d 477][Classification of inmates][Construction of law][Co' nlogue V. Shinbaum p49 F. 2d 378][Frazier V. Manson 703 L.ed 2d 30][Faulkner V. State, 586 so 2d 39][Hilsabeck]Exparte Hisalbeck 477 so 2d 465][Mckiniss 35 L. ed 2d Acts 231 Ala. Exparte Ashton. Koroszka V. Belford 41 L. ed 2d 374].....

"SEX OFFENDERS"

Mckune V. Lile (2000) 536 us 24, 153 L.ed 2d 47, "Sex Offenders"
SEX OFFENDERS are serious threat in this nation, in 1995, an estimated 355,000 rapes and sexual assaults occured nationwide. U.S. Department Of Justice, bereau of justice statistics, sex offenders offenses reported between 1980 and 1994, the population of imprisonment of sex offenders increased at a faster rate than any other category of violent offenses,[violent crimes]. As in most sexual cases, the victim of sexual assault are most juveniles. In 1995, for instance, a majority of the reported forcible sexual offenses were committed against persons under 18 years of age.... [University of New Hamsphire] crimes against children, research center fact sheet. Nearly 4 out of 10 imprisoned, violent sex of-fnders said their victims was 12 years of age or younger.... when convicted sex offenders re-enter society, they are much likely to re-offend, be re-arrested for a new rape or sexual assault.

LOPEZ V. DAVIS 531 U.S. 230, 148 L.ed 2d 635, 121 S.Ct 714

Title [18 USC & 3621] Governs the imprisonment of persons convicted of federal crimes. In 1990 congress amended the statute to provide that the Bureau shall....make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse, Four years later, congress again amended 3621, this time to provide incentives for prisoners participating in the program. The incentive provision of that section reads:" the period of a prisoner convicted of non-violent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

In 1995, The Bureau published a rule to implement the early release incentive. 60 Fed reg 27692-27695; 28 CFR & 550. 58. Because the statute explicitly confined the incentive to prisoners convicted of "non-violent offenses" 18 U.S.C & 3621(e) (2) (b), the BOP ranked ineligable for early release all inmates currently incarcerated for crimes of violence. 60 Fed Reg 27692. As explained in the BOP program statement, the BOP defined "crimes of violence" to include a drug trafficking conviction under 21 USC.

3621 (e)(2)(B) required the bureau to look into only the offense of conviction (Drug Trafficking), and not to sentencing factors (Fire arm Possession), in determining whether an offender was convicted of a "non violent offense", and therefore elligable under the statute for the early release incentive.

In contrast to the earlier rule. However, the 1997 regulation does not order this exclusion by defining the statutory term prisoner convicted of a 'non-violent offense' or the cognate term crimes of violence'. instead, the current regulation relies upon' the discretion allotted to the director of the bureau of prisons in granting a sentence reduction to exclude categories of inmates. The regulation, designed to achieve consistent administration of the incentive, now provides,

(a) ADDITIONAL EARLY RELEASE CRITERIA.(1). As an exercise of the discretion invested in the director of the BOP, the following category of inmates are not elligiable for early release.

"(iv) Inmates who have a prior felony are misdeamenor conviction for homicide, forciable rape, robbery, aggravated assault, or child sexual abuse offenses;

"(vi) Inmates whose currently offense is a felony:

(B) That involved in carrying, possession, or use of a firearm or other dangerous weapon..... To the Bereaus asserted disrection to prescribe additional early release criteria. Drug traffickers who possess firearms when they engage in crimes are no longer characterized as "violent offenders" within the meaning of the statute. But they are bracketed, for the sentence reduction purposes with persons currently incarcerated for "non violent" offenses who in the pass comm itted crimes that qualified as violent. The preconvic-tion conduct of both armed offenders and certain redicivist in the Bereaus's view, suggest that they pose a particular risk to the public.... In 1997, petitioner Christipher A. Lopez was convicted of possession with the intent to distribute methamphetamine in viola-tion. Upon finding that lopez possessed a firearm in connection with his offense, the district court enhanced his sentence two le-vels.

While incarcerated, Lopez requested substance abuse treatment. The Bereau found him qualified for the resident drug treatment pro-gram, but categorically inelligable for early release. The court reversed. *Bellis V. Davis* 186 F 3d 1092 (199). The statute provides the period a prisoner convicted of a non-violent offense remains in custody after successfully completing a drug treatment program may be reduced by the BOP.

The measure thus catergorically denies early release elligibility to inmates convicted of violent offenses. The question we address is whether the Bereau has discretion to delineate, as an additional category of inelligible inmates, those whose current offenses is a felony conviction involving a firearm.

Lopez urges that the statute is unambiguous, he says that. by identifying a class of inmates ineligible for sentence reduction under 3621 (e) (2) (B), those convicted of a violent offense, congress has barred the Bureau from identifying further categories of ineligible inmates. If congress wanted the BOP to reduce the category of inmates eligible for the early release incentives (Beyond the ones identified by congress) Congress would have specifically placed this grant of authority in the language of the statute'. Congress used the word "May" rather than "Shall", has no significance. And if the BOP does have discretion to deny early release to some inmates, but categorically deny early release even to the recidivists with prior (Perhaps Multiple) convictions of rape, robbery, homicide etc, for that provision, as much as the exclusion of inmates imprisoned for the offense involving a firearm, entails no individualized determination based on postconviction conduct. (A prisoner serving a term of one year and less than "life" may receive credits toward the service of the prisoners sentence....subject to determination by the BOP that, during that year, the prisoner has displayed exemplary compliance with such institutional disciplinary regulations").

The question at issue in this case is whether congress merely intended for some, of federal prisoners who were convicted of non-violent crimes and who has successfully completed a Bureau of prisoners drug treatment program are eligible for a sentence reduction..... The court stated; I believe congress has answered the precise question. The statute expressly states that the sentence of every prisoner in that category "May Be Reduced", both the text of the statute and the aforementioned history demonstrate that congress directly addressed the precise question of what offenses ought to be disqualified and prisoners disqualification for eligibility for sentence reduction, and its "unambiguous answer was "violent offenses". under the statute as enacted, those who committed crimes of violence are categorically barred from receiving sentence reduction while those convicted of non-violence offenses "May" receive such an inducement.

EXHIBIT 1

ALABAMA DEPARTMENT OF CORRECTIONS
INMATE SUMMARY AS OF 10/11/2006INST: 017
CODE: CRSUM

Jountain

C0R716-3

AI5: 00155509A INMATE: SMITH, CEDRIC ALLEN RACE: B SEX: M

INST: 017 - RCC DORM: 00 JAIL CR: 000Y 07M 18D

DOB: 06/13/1969 SSN: 420-15-1206

ALIAS: SMITH, ALLEN C ALIAS: SMITH, CED

ALIAS: SMITH, CEDRIC ALIAS: SMITH, CEDRIC ALLAN

ALIAS: SMITH, CEDRICK A

ADM DT: 02/16/1993 DEAD TIME: 000Y 00M 00D

ADM TYP: NEW COMIT FROM CRT W/REV OF PR STAT: PAROLE REVOKED

CURRENT CUST: QUR-9 CURRENT CUST DT: 09/19/2006 PAROLE REVIEW DATE: AUG 2009

SECURITY LEVEL: (1) ONE

SERVING UNDER ACT446 LAW IN CLASS IV CURRENT CLASS DATE: 11/18/1993

INMATE IS EARNING : PROHIBITED FROM EARNING GOODTIME

COUNTY	SENT DT	CASE NO	CRIME	JLI-CR	TERM
SHELBY	04/06/93	N91455.70	THEFT OF PROPERTY II	* 0097D	002Y 00M 00D CS
	ATTORNEY FEES :	\$000300	HABITUAL OFFENDER :	N	
	COURT COSTS :	\$0000179	FINES :	\$0000000	RESTITUTION : \$0000050
SHELBY	11/18/93	N93000213	THEFT OF PROPERTY I	* 0098D	010Y 00M 00D CS
	ATTORNEY FEES :	\$000000	HABITUAL OFFENDER :	Y	
	COURT COSTS :	\$0000235	FINES :	\$0000000	RESTITUTION : \$0000181
SHELBY	11/18/93	N93000215	THEFT OF PROPERTY I	0228D	020Y 00M 00D CC
	ATTORNEY FEES :	\$000000	HABITUAL OFFENDER :	Y	
	COURT COSTS :	\$0000235	FINES :	\$0000000	RESTITUTION : \$0000092

TOTAL TERM	MIN REL DT	GOOD TIME BAL	GOOD TIME REV	LONG DATE
020Y 00M 00D	03/29/2013	000Y 00M 00D	000Y 00M 00D	03/29/2013

INMATE LITERAL:

DETAINDER WARRANTS SUMMARY

INMATE CURRENTLY HAS NO DETAINDER WARRANT RECORDS

ESCAPEE-PAROLE SUMMARY

PAROLED FRM 050:09/22/03 RVK:00/00/00 DELQ:11/15/04 RECAP:11/05/04 RTN:11/05/04

REINSTATED 050:07/01/05 RVK:10/03/06 DELQ:07/10/06 RECAP:05/17/06 RTN:05/17/06

CONTINUED ON NEXT PAGE

EXHIBIT #2

ALABAMA DEPARTMENT OF CORRECTIONS
INMATE SUMMARY AS OF 03/10/2006INST: 002
CODE: CDRVK

CBR716-3

AIS: 002289885 INMATE: KING, SCOTT CHARLES RACE: W SEX: M

INST: 002 - FOUNTAIN CORRECTIONAL CENTER DORM: 00 JAIL CR: 000Y 03M 29D

DOB: 03/25/1977 SSN: 453-77-6794

ALIAS: KING, CHARLES SCOTT ALIAS: KING, SCOTT C

ADM DT: 04/29/2003 DEAD TIME: 000Y 00M 00D

ADM TYP: NEW COMMITMENT - SPLIT SENTENC STAT: NEW COMIT FROM CRT W/O REV OF

CURRENT CUST: MED-2 CURRENT CUST DT: 03/04/2004 PAROLE REVIEW DATE: APR 2006

SECURITY LEVEL: (4) FOUR

SERVING UNDER ACT446 LAW IN CLASS I CURRENT CLASS DATE: 06/02/2004

INMATE IS EARNING : EARNS 75 DAYS FOR EACH 30 SERVED

COUNTY	SENT DT	CASE NO	CRIME	JL-CR	TERM
LAUDERDALE	09/15/03	NO2000414	POSS MARIJUANA I	* 0115D	002Y 00M 00D CS
	ATTORNEY FEES :	\$001010	HABITUAL OFFENDER :	Y	
	COURT COSTS :	\$0000256	FINES :	\$0000000	RESTITUTION : \$0001310
LAUDERDALE	12/02/03	NO3000287	RAPE II	0119D	015Y 00M 00D CC
	ATTORNEY FEES :	\$000000	HABITUAL OFFENDER :	Y	
	COURT COSTS :	\$0000339	FINES :	\$0000000	RESTITUTION : \$0000050
LAUDERDALE	12/02/03	NO3000456	BURGLARY III	0118D	010Y 00M 00D CC
	ATTORNEY FEES :	\$000000	HABITUAL OFFENDER :	Y	

TOTAL TERM	MIN RELI DT	GOOD TIME BAL	GOOD TIME REV	LONG DATE
015Y 00M 00D	04/11/2008	005Y 01M 05D	000Y 00M 00D	08/02/2018

INMATE LITERAL:

DETAINDER WARRANTS SUMMARY

INMATE CURRENTLY HAS NO DETAINDER WARRANT RECORDS

ESCAPEE-PAROLE SUMMARY

INMATE CURRENTLY HAS NO PAROLE RECORDS

INMATE CURRENTLY HAS NO PROBATION 754 RECORDS

INMATE HAS NO ESCAPES FROM ADOC SINCE OBSCIS RECORDING B

DISCIPLINARY/CITATION SUMMARY

>> CITATION: 03/07/2006

CUST FROM MED2 TO MED2

CITATION TYPE: BEHAVIOR CITATION

AT INST: 002 RULE NUMBER: 50

RETAINED DAYS: 0000

SEQ #: 08

RULE LIT: BEING IN AN UNAUTHORIZED AREA

CONTINUED ON NEXT PAGE

CBR716-3

1005K

EXHIBIT #3

ALABAMA DEPARTMENT OF CORRECTIONS
INMATE SUMMARY AS OF 05/17/2006INST: 249
CODE: CSMDI

AIS: 00222361S INMATE: MORIE, RALPH EVERETT RACE: W SEX: M
 INST: 249 - MOBILE DORM: 00 JAIL CR: 001Y 02M 29D
 DOB: 12/23/1961 SSN: 587-31-9728
 ALIAS: MORIE, RALPH E
 ADM DT: 03/26/2002 DEAD TIME: 000Y 00M 00D
 ADM TYP: NEW COMMITMENT - SPLIT SENTENC STAT: NEW COMMITMENT - SPLIT SENTENC
 CURRENT CUST: DTM-5 CURRENT CUST DT: 04/20/2006 PAROLE REVIEW DATE: - NONE -
 SECURITY LEVEL: (4) FOUR

SERVING UNDER ACT446 LAW IN CLASS IV CURRENT CLASS DATE: 04/20/2006
 INMATE IS EARNING : STRAIGHT TIME

COUNTY	SENT DT	CASE NO	CRIME	JLI-CR	TERM
MOBILE	04/20/06	NO1003316	SODOMY II	02240	001Y 06M 00D CS
			3YRS PROBATION	0	
MOBILE	05/05/06	NO6000254	VIOLATION OF SEX OFF REGIS	02300	002Y 00M 00D CS
			5YRS PROBATION	0	
ATTORNEY FEES : \$000350			HABITUAL OFFENDER : N		
COURT COSTS : \$0000261			FINES : \$0000000 RESTITUTION : \$0000050		

TOTAL TERM	MIN REL DT	GOOD TIME BAL	GOOD TIME REV	LONG DATE
003Y 06M 00D	07/15/2008	000Y 00M 00D	000Y 00M 00D	07/15/2008

INMATE LITERAL: 2ND SPLIT; NEW CASES PENDING; NO RESIDENT NEAR SCHOOL

DETAINER WARRANTS SUMMARY
 INMATE CURRENTLY HAS NO DETAINER WARRANT RECORDS

ESCAPEE-PAROLE SUMMARY
 INMATE CURRENTLY HAS NO PAROLE RECORDS

INMATE HAS NO ESCAPES FROM ADOC SINCE OBSCIS RECORDING B

DISCIPLINARY/CITATION SUMMARY
 INMATE CURRENTLY HAS NO DISCIPLINARY/CITATION RECORDS

ACBR716-3

EXHIBIT #1

ALABAMA DEPARTMENT OF CORRECTIONS
INMATE SUMMARY AS OF 08/25/2006INST: *raw*
CODE: CM

AIS: 00247936S INMATE: BINION, WILLIAM ALLEN RACE: W SEX: M

INST: 017 - RCC DORM: 00 JAIL CR: 00Y 00M 00D

DOB: 07/12/1972 SSN: 418-21-6803

ADM DT: 06/15/2006 DEAD TIME: 000Y 00M 00D

ADM TYP: NEW COMIT FROM CRT W/O REV OF STAT: NEW COMIT FROM CRT W/O REV OF

CURRENT CUST: QUR-7 CURRENT CUST DT: 08/21/2006 PAROLE REVIEW DATE: - NONE -

SECURITY LEVEL: NO CLASSIFICATION RECORD FOUND

SERVING UNDER ACT446 LAW IN CLASS III CURRENT CLASS DATE: 07/15/2006

INMATE IS EARNING : EARNS 20 DAYS FOR EACH 30 SERVED

COUNTY	SENT DT	CASE NO	CRIME	JL-CR	TERM
CHILTON	06/15/06	N06000042	RAPE II	0000D	015Y 00M 00D CS
ATTORNEY FEES : \$000750			HABITUAL OFFENDER : N		
COURT COSTS : \$0000273			FINES : \$0000000 RESTITUTION : \$0000050		

TOTAL TERM	MIN REL DT	GOOD TIME BAL	GOOD TIME REV	LONG DATE
015Y 00M 00D	01/02/2013	000Y 00M 27D	000Y 00M 00D	06/14/2021

INMATE LITERAL:

DETAINDER WARRANTS SUMMARY

INMATE CURRENTLY HAS NO DETAINDER WARRANT RECORDS

ESCAPEE-PAROLE SUMMARY

INMATE CURRENTLY HAS NO PAROLE RECORDS

INMATE CURRENTLY HAS NO PROBATION 754 RECORDS

INMATE HAS NO ESCAPES FROM ADOC SINCE OBSCIS RECORDING B

DISCIPLINARY/CITATION SUMMARY

INMATE CURRENTLY HAS NO DISCIPLINARY/CITATION RECORDS

Exhibit # 5

690

Section 2. All laws or parts of laws inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 3. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved May 19, 1980

Time: 5:00 P.M.

Act No. 80-445

S. 103—Pearson

AN ACT

To provide that legislative appropriations to the University of Alabama in Birmingham and the University of South Alabama are for the unrestricted support of the activities of the University and therefore insurance companies are prohibited from applying or taking into account in any manner any portion of those appropriations in determining reimbursement for patient care activities.

Be It Enacted by the Legislature of Alabama:

Section 1. Any appropriations made by the Legislature of Alabama to the University of Alabama in Birmingham and to the University of South Alabama shall be for the unrestricted support of the activities of the said University and therefore insurance companies, whether operated for profit or not for profit, licensed under the laws of the State of Alabama, whether acting on their own behalf or for others, are prohibited from applying or taking into account in any manner whatsoever, any portion of those appropriations in determining reimbursement for patient care activities.

Section 2. This Act shall become effective immediately upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved May 19, 1980

Time: 5:00 P.M.

Act No. 80-446

S. 107—Cook

AN ACT

To establish the "Alabama Correctional Incentive Time Act"; to provide for earned deductions from penitentiary and hard labor sentences and to establish certain criteria therefor; to create classifications for measurement of such

deductions and eligibility therefor; to require minimum sentences prior to parole eligibility; to authorize the commissioner of the department of corrections to restore certain portions of such deductions lost; to authorize the commissioner to issue, promulgate and implement such rules and regulations necessary to implement the provisions of this act; to specifically repeal Sections 14-9-1, 14-9-2, 14-9-4, 14-9-20, 14-9-21, 14-9-22, 14-9-23, 14-9-24 and 14-9-25 of the Code of Alabama 1975, and all laws or parts of laws conflicting with this act; to make certain exemptions from the provisions of this act for those persons presently serving as inmates in the penitentiary or at hard labor and for those who are convicted for crimes committed prior to the effective date of this act, so as to provide that such prisoners shall earn deductions from sentences as presently provided by law; and to provide habitual offenders shall not be eligible for any deductions from sentences.

Be It Enacted by the Legislature of Alabama:

Section 1. This act shall be known as the "Alabama Correctional Incentive Time Act."

Section 2. Each prisoner who shall hereafter be convicted of any offense against the laws of the State of Alabama and is confined, in execution of the judgment or sentence upon any conviction, in the penitentiary or at hard labor for the county or in any municipal jail for a definite or indeterminate term, other than for life, whose record of conduct shows that he has faithfully observed the rules for a period of time to be specified by this act may be entitled to earn a deduction from the term of his sentence as follows:

- (1) Seventy-five days for each thirty days actually served while the prisoner is classified as a Class I prisoner.
- (2) Forty days for each thirty days actually served while the prisoner is a Class II prisoner.
- (3) Twenty days for each thirty days actually served while the prisoner is a Class III prisoner.
- (4) No good time shall accrue during the period the prisoner is classified as a Class IV prisoner.

Within 90 days after the effective date of this act the commissioner of the department of corrections shall establish and publish in appropriate directives certain criteria not in conflict with this act for Class I, II, III, and IV prisoner classifications. Such classifications shall encompass consideration of the prisoner's behavior, discipline, work practices and job responsibilities.

Class I is set aside for those prisoners who are considered to be trustworthy in every respect and who, by virtue of their work habits, conduct and attitude of cooperation have proven their trustworthiness. An example of a Class I inmate would be one who

Exhibit 6

ALABAMA DEPARTMENT OF CORRECTIONS
INMATE SUMMARY AS OF 01/03/2007INST: 054
CODE: CDRVK

CBR716-3

AIS: 00124145C INMATE: THOMAS, STEPHEN RACE: B SEX: M
 INST: 054 - CAMDEN COMM WORK CENTER DORM: 00 JAIL CR: 000Y 03M 15D
 DOB: 06/21/1959 SSN: 416-92-2977

ALIAS: "STEPP", ALIAS: SMITH, JAMES
 ALIAS: SMITH, JAMES A ALIAS: SMITH, JOHNNY
 ALIAS: SMITH, MICHAEL ALIAS: THOMAS, MIKE S

ADM DT: 03/05/2002 DEAD TIME: 000Y 00M 00D
 ADM TYP: NEW COMIT FROM CRT W/O REV OF STAT: REMOVED FROM SEGREGATION
 CURRENT CUST: MIN-9 CURRENT CUST DT: 05/25/2006 PAROLE REVIEW DATE: MAY 2007
 SECURITY LEVEL: (2) TWO

SERVING UNDER ACT446 LAW IN CLASS IV CURRENT CLASS DATE: 03/05/2002
 INMATE IS EARNING : PROHIBITED FROM EARNING GOODTIME

COUNTY	SENT DT	CASE NO	CRIME	JL-CR	TERM
TUSCALOOSA	03/05/02	NO1000672	DIST CONTROL SUBSTANCE DELIVERY	0105D	020Y 00M 00D CS
ATTORNEY FEES : \$000000		HABITUAL OFFENDER : Y			
COURT COSTS : \$0000273		FINES : \$0000000		RESTITUTION : \$0002415	

TOTAL TERM	MIN REL DT	GOOD TIME BAL	GOOD TIME REV	LONG DATE
020Y 00M 00D	11/19/2021	000Y 00M 00D	000Y 00M 00D	11/19/2021

INMATE LITERAL: *****

DETAINER WARRANTS SUMMARY
 INMATE CURRENTLY HAS NO DETAINER WARRANT RECORDS

ESCAPEE-PAROLE SUMMARY

PAROLED FRM	030:04/25/83	RVK:01/10/84	DELQ:11/07/83	RECAP:12/29/83	RTN:01/06/84
PAROLED FRM	050:09/06/94	RVK:06/28/95	DELQ:05/08/95	RECAP:04/17/95	RTN:05/19/95
PAROLED FRM	050:02/14/00	RVK:00/00/00	DELQ:00/00/00	RECAP:00/00/00	RTN:00/00/00

INMATE CURRENTLY HAS NO PROBATION 754 RECORDS

INMATE HAS NO ESCAPES FROM ADOC SINCE OBSCIS RECORDING B

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